

Order

Entered: July 22, 2003

**Michigan Supreme Court
Lansing, Michigan**

Maura D. Corrigan,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

ADM File No. 2001-29

Amendment of Rule 702 of the Michigan Rules of Evidence

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendment of Rule 702 of the Michigan Rules of Evidence is adopted, effective January 1, 2004.

[The present language of Rule 702 is amended as indicated below
by underlining for additions and strikeovers for deletions.]

Rule 702 Testimony by Experts

If the court determines that ~~recognized~~ scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education; may testify thereto in the form of an opinion or otherwise if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Staff Comment: The July 22, 2003, amendment of MRE 702, effective January 1, 2004, conforms the Michigan rule to Rule 702 of the Federal Rules of Evidence, as amended effective December 1, 2000, except that the Michigan rule retains the words “the court determines that” after the word “If” at the outset of the rule. The new language requires trial judges to act as gatekeepers who must exclude unreliable expert testimony. See *Daubert v Merrell Dow Pharmaceuticals, Inc*, 509 US 579; 113 S Ct 2786; 125 L Ed 2d 469 (1993), and *Kumho Tire Co, Ltd v Carmichael*, 526 US 137; 119 S Ct 1167; 143 L

Ed 2d 238 (1999). The retained words emphasize the centrality of the court's gatekeeping role in excluding unproven expert theories and methodologies from jury consideration.

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.

Cavanagh, J., opposes the amendment of MRE 702.

Weaver, J., would not adopt the amendment of MRE 702 at the present time.

Kelly, J., states:

I would make no change in the rule at this time. The data furnished to the Court does not support altering the status quo. I agree with the Prosecuting Attorneys Association of Michigan and others presenting their position that this amendment will produce significant changes in civil and criminal trials when no compelling need has been shown.



I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

July 22, 2003 Corbin R. Davis

Clerk